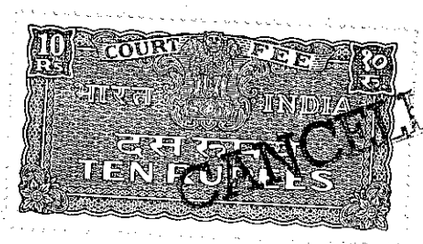

(1)

CF 10/-

(3)

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

In the Matter of W.P.NO. 1938 /2003.

PETITIONER

Visheshar alias Vishahat, aged about 58 years, son of Shri Bhanupratap Chandrakar, Agriculturist, resident of Purani Basti, Tah. Mahasamund, Distt. Mahasammund (Chhattisgarh).

P. R. No. 1223/03
Presented by Shri Sanjay Ku. Agrawal
dated 30.06.03

VERSUS

RESPONDENTS

1. Banmali son of Shri Sakharam, caste Marar, resident of Nayapara, Tah. Mahasamund, Distt. Raipur (C.G.)

2. State of Chhattisgarh, through : Collector Mahasamund (Chhattisgarh).

PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(25)

आदेश पत्रक

Writ Petition Nos. 1937/2003, 1938/2003 & 1939/2003

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

05/07/2003

Shri Kishore Badhuri, counsel for the petitioner.

Shri Sanjay K Agarwal, Deputy Advocate General for the State.

Heard.

All these three writ petition Nos. 1937/2003 (Visheshar alias Vishahat Vs. Dashak and another), 1938/2003 (Visheshar alias vishahat Vs. Banmali and another) and 1939/2003 (Sathrughan Ram and others Vs,. Vivek Kumar Dave and another) are being disposed of by this common order as the same relates to the same issue.

In the aforesaid writ petitions the petitioners have challenged the order dated 07/05/2003 passed by the learned IIIrd Civil Judge, Class I, Mahasamund in Civil Suit Nos.106-A/2001, 43-A/2003 and 13-A/2002 respectively by which the learned Civil Judge recorded that inspite of the issuance of the summons the plaintiff's witnesses Chhabi Ram Diwan and Manarakhan Dhruv are not present as Chhabi Ram Diwan requested that since he is busy in official work. Therefore, he is

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(26)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

unable to remain present before the Court and Manarakhan Dhruv requested that he is unable to remain present in the Court on account of his ill-health. The Court further recorded that since the matter is pending for recording the evidence of these two Patwaries since 07/11/2001 and the plaintiff has not moved any application for calling these witnesses through summons as witnesses, therefore, the plaintiff is directed to produce these witnesses on his own.

Learned counsel for the petitioners argued that these Patwaries are listed witnesses in all three Civil Suits and for that purpose P.F. for issuance of summons were paid by the plaintiff and accordingly these witnesses are summoned by the learned Civil Judge and they are not under the control of the plaintiff being a public servant unless and until they are summoned through the process of the Court, their attendance cannot be procured and they are most important and material witnesses for the decision of the dispute in the suit and without securing their attendance the right of the plaintiff will be seriously prejudiced and affected and the plaintiff will suffer irreparable injury on

[पीछे]

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(27)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

account of non-examination of these witnesses. Therefore, the order of the learned Civil Judge is not proper and legal.

At the outset, learned counsel for the petitioner very candidly and frankly admitted that if the Court of the Civil Judge commands by issuing Dasti summons, requiring the presence of those witnesses, they will try to secure the attendance of the witnesses, and if anything happens which is beyond the control of the plaintiff, then they will submit the report before the Court. He further submitted that in consonance with the order 07/05/2003 passed by the learned Civil Judge, the plaintiffs are also prepared to file an application for summoning those witnesses.

Counsel for the petitioner at this stage submitted that the respondent no.1 was ex parte through out in the proceeding because inspite of the service he did not appear, therefore, in these petitions the order can be passed without issuance of notice to that party as it is not going to effect the interest of the respondent no.1.

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Having heard the learned counsel for the parties and having regard to the peculiar situation which has arisen out of the order passed by the Civil Judge, and considering the facts and circumstances of the case I am of the opinion that it would be just, proper and appropriate to dispose of these writ petitions with a direction that if the petitioners move an application in their respective cases pending before the learned Civil Judge mentioning therein that the summons may be handed over Dasti for effecting the service on the concerned Patwaries and procuring their attendance, then the learned Civil Judge to consider that application and pass appropriate order to hand over the Dasti summons to the plaintiff for securing attendance of the concerned Patwaries and if Patwaries do not appear inspite of service then they can be summoned through bailable warrants.

With the aforesaid observation, these writ petitions stand disposed of. Consequently, M.W.P. Nos. 1755/2003, 1756/2003, 1757/2003, I.A.No.5813/2003, 5814/2003 and 5815/2003 also stand disposed of.

Sd/-
L.C.BHADOO
Judge

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